

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

APPELLATE DIVISION

ENDORSED
FILED
ALAMEDA COUNTY

NOV 29 2010

CLERK OF THE SUPERIOR COURT
By RUPY ATWAL Deputy

PEOPLE OF THE STATE OF
CALIFORNIA

Appellate No. 5113

Plaintiff/Respondent

Trial Court No: 50608153/TRF

v.

[REDACTED] KUNG,
Defendant/Appellant

APPELLANT'S OPENING BRIEF

On Appeal from a Judgment of the Superior Court of California - County of Alameda

HONORABLE David Byron, Judge Pro Tem, Presiding

For Defendant/Appellant

[REDACTED] KUNG

IN PRO PER

[REDACTED]

Telephone: [REDACTED]

CASE SUMMARY: This case is derived from a Red Light Camera Automatic Enforcement System (Hereinafter AES), which was installed in the City of Newark (Hereinafter the City) within the County of Alameda, for the sole purpose of persecuting red light runners. The City installed the AES in connection with a private contractor, Redflex Traffic Systems, Inc., (Hereinafter Redflex).

On October 6, 2009, an alleged violation of Vehicle Code §§ 21453(a), a photo enforced red-light violation occurred. The citation was issued to the Appellant, who was identified by the registered owner of the vehicle, [REDACTED] Kung. Newark Police Officer Duncan Hall (Hereinafter Hall) issued the citation. Hall determined, after his review of the contents of the red-light camera documents, that a violation of Vehicle Code §§ 21453(a) had occurred. The case came on for trial in the Traffic Department in the above-mentioned court on April 20, 2010, before Honorable David Byron, Judge Pro Tem. The People's prosecutor and sole witness, Hall, appeared at the trial and offered into evidence a photo enforcement package, prepared by Redflex, which contained hearsay evidence identifying the Appellant as the driver of the vehicle. The Appellant requested a motion to exclude the red light photo packet on hearsay and foundation grounds, on issues related on *Melendez-Diaz v. Massachusetts*, as well as the City of Newark's compliance requirement under Vehicle Code §§ 21455.5 as well. The motion was denied. The evidence packet, including the declaration of the custodian of record and photographs was admitted into evidence over the Appellant's objection.

VERDICT AND SENTENCE:

The court later made a finding of guilt and ordered the Appellant to pay a fine of \$446 and \$54 for traffic school.

ISSUES PRESENTED

I. ADMISSIBILITY OF EVIDENCE

Did the Trial Court err in admitting evidence based on hearsay and lack of foundations?

II. SUBSTANTIALITY OF EVIDENCE SUPPORTING THE CITY'S COMPLIANCE WITH VEHICLE CODE §§ 21455.5

Did the People provide adequate evidence to support the City had complied with Vehicle Code §§ 21455.5?

III. EXCESSIVE DELAY IN APPEAL

Did the Appellant suffered enough from the excessive delay in appeal?

ARUGMENT:

I. The Trial Court was without jurisdiction to find defendant guilty after having admitted, over defendant's objection, evidence based on hearsay and lack of foundations.

a. People v. KHALED, 186 Cal. App. 4th Supp. 1

Pursuant to *People v. KHALED* (2010) 186 Cal. App. 4th Supp. 1, cases involving AES have no ground for a finding of guilt as the evidence is based on hearsay and lack of foundations.

Specifically, *People v. KHALED (2010) 186 Cal. App. 4th Supp. 1*, is a case involving AES, which the Court ruled that these evidence package i) were wrongfully admitted as evidence as they are lack of foundations; ii) could not be justified under either the "official records exception" or the "business records exception" of the Evidence Code §§ 1271 and 1280, which the Court reversed the judgment of guilt and order a dismissal of the case.

Both *People v. KHALED (2010) 186 Cal. App. 4th Supp. 1*, and this case are de facto identical that i) the fact of the cases are identical; ii) Both cases involve AES; iii) the People only provided an evidence package, which was provided by Redflex, as well as an Officer as the sole witness to support the People's allegations.

b. Hall's testimony

Hall objected and testified the motion to exclude evidence on behalf of the People. However, Hall did not provide any material witness or evidence to substantiate the People's claim in compliance with Vehicle Code §§ 21455.5.

Specifically, Hall testified that the City was in compliance with Vehicle Code §§ 21455.5 at the time of alleged violation. However, Hall, a Police Officer for the City, should have no ground to testify for other governmental agencies that involves in AES, which includes, but not limited to, the City's Department of Public Work, the City Manager's Office, as well as California Department of Transportation, as Hall was not employed by

any of these parties, as well as Hall did not have any qualifications or authorizations to testify on their behalf.

Furthermore, Hall testified that a docket of court docket had provided to the Trial Court. However, the Appellant was not aware the existence of such docket, as well as the People failed to serve such docket properly.

II. The Trial Court was without jurisdiction to find defendant guilty by shifting burden of proof from the Prosecution to the Appellant.

The Trial Court demanded the Appellant to substantiate a reasonable doubt, which supposes to be the responsibility of the People, holding the burden of proof.

Specifically, the Appellant raised the issue of the City's compliance with Vehicle Code §§ 21455.5 as the reasonable doubt as it was the key element to substantiate a violation of Vehicle Code §§ 21453(a).

However, the Trial Court did not require the People to demonstrate how the City was in compliance. Instead, the Trial Court demanded the Appellant to demonstrate how the City was not in compliance, which completely shifted the burden of proof from the People to the Appellant.

III. The Trial Court committed “prejudicial error” by denying defendant’s Constitutional right of procedural due process.

a. Melendez-Diaz v. Massachusetts (2009) 129 S.Ct. 2527

The Trial Court failed to protect the Appellant's legal right guaranteed by Sixth Amendment, which allows the Appellant's right to confront and cross-examine witnesses.

Specifically, the Appellant objected the introduction of the evidence based on the fact that the Appellant was unable to confront every material witness, from the Redflex employee who examined the photos to the employee who processed the citation.

However, the Trial Court rejected such argument and rule against the Appellant. Pursuant to *Melendez-Diaz v. Massachusetts (2009) 129 S.Ct. 2527*, the Appellant has the right to confront every material witness. As the Trial Court failed to allow the Appellant to confront, the Trial Court committed "prejudicial error" by denying Appellant's Constitutional right of procedural due process.

b. Hall's testimony

Hall objected and testified the motion to exclude evidence on behalf of the People.

However, the Trial Court failed to allow the Appellant to cross-examine Hall.

Specifically, Hall testified for the People that the City was in compliance with Vehicle Code §§ 21455.5 at the time of alleged violation. However, Hall, a Police Officer for the City, should have no ground to testify for other governmental agencies that involves in AES, which includes, but not limited to, the City's Department of Public Work, the City Manager's Office, as well as California Department of Transportation, as Hall was not employed by any of these parties, as well as Hall did not have any qualifications or

authorizations to testify on their behalf. However, the Trial Court failed to allow the Appellant to cross-examine Hall with his testimony in question, which the Trial Court failed to guarantee Appellant Sixth Amendment's right.

IV. The Appellant has suffered enough due to excessive delay in appeal.

Pursuant to *People v. Jenkins* (1976) 55 Cal.App.3d Supp. 55, 127 Cal. Rptr. 870; *People v. Ruhl* (1976) 63 Cal.App.3d 6, 134 Cal. Rptr. 62; and *People v. Bighinatti* (1975) 55 Cal.App.3d Supp. 5, 127 Cal. Rptr. 310, the Appellant, in having to appeal such a minor violation, has suffered enough.

Specifically, the Appellant filed a timely appeal (CR-142) on April 22, 2010 and provided Proposed Statement on Appeal (CR-143) on May 4, 2010. The Respondent did not file any amendments. However, a hearing on settlement of the statement on appeal was not certified until September 9, 2010, which is 3 months after the Respondent's deadline to file and serve any amendments. Furthermore, while the date of this case transfer from the Trial Court to the Appellate Division is unknown, the Appellant was not required to submit this brief until October 28, 2010. Given the deadline that the Appellant can file the optional Closing Brief until January 18, 2011, as well as service interruption of the Court due to budget issues, this case would not be heard almost 1 year or more after the Appellant filed the timely appeal.

CONCLUSION

The reasons set forth above demonstrate that the Trial Court erred in making a finding of guilt. No conviction of Vehicle Code §§ 21453(a) can be sustained unless the record contains substantial evidence supporting each element of the charged offense. The Appellant respectfully requests that the Appellant's conviction should be reversed with an order to dismiss the matter.

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 1537 words, including footnotes. In making this certification, I have relied on word count of the computer program used to prepare the brief. The brief has been typeset with double spacing and a 12-point font.

DATED: November 23, 2010

Respectfully submitted,



 KUNG

Defendant/Appellant, IN PRO PER